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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

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12
13 MICHAEL ROCCA,

14 Plaintiff,

15 vs.

16 DENJAS, INC. dba DENNY'S
17 #8151; R & R INVESTMENT
18 GROUP, LLC,
19 Defendants.

} No.

} **Plaintiff's Complaint**

I. SUMMARY

1. This is a civil rights action by plaintiff Michael Rocca (“Rocca”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Denny's #8151
5520 South Street
Lakewood, CA 90713
(referred to hereinafter as “the Restaurant”)

2. Rocca seeks damages, injunctive and declaratory relief, attorney fees and costs pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) and related California statutes against: Denjas, Inc. dba Denny's #8151; and, R & R Investment Group, LLC (hereinafter collectively referred to as “Denny's”).

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.

5. Rocca’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Central District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Denny’s owns, operates, and/or leases the Restaurant, and consists of a person (or persons), firm, and/or corporation.

- 1 • The ramp leading from one of the disabled parking spaces has no
- 2 flared edges (just a sharp drop off), thus forcing Rocca to risk the
- 3 wheels of his wheelchair dropping off of the ramp and tipping his
- 4 chair;
- 5 • One of the access aisles is too short, thus forcing Rocca to
- 6 unload/transfer from a vehicle onto a ramp and risk having his
- 7 wheelchair tip over;
- 8 • The coat hook on the interior of the water closet stall door is
- 9 mounted too high, thus making it difficult for Rocca to reach and
- 10 use;
- 11 • The middle mounting bracket obstructs the use of the side grab bar,
- 12 thus making it difficult for Rocca to transfer from his wheelchair to
- 13 the water closet;
- 14 • The toilet tissue dispenser is mounted too far from the front of the
- 15 water closet, thus making it difficult for Rocca to reach and use;
- 16 • The pipes beneath the lavatory are incompletely wrapped, thus
- 17 causing Rocca to risk burning his legs when washing his hands; and,
- 18 • There is insufficient strike side clearance when exiting the restroom,
- 19 thus making it difficult for Rocca to pull open the door.

20 These barriers prevented Rocca from enjoying full and equal access.

21 11. Rocca was also deterred from visiting the Restaurant because he
 22 knew that the Restaurant's goods, services, facilities, privileges, advantages, and
 23 accommodations were unavailable to physically disabled patrons (such as
 24 himself). He continues to be deterred from visiting the Restaurant because of the
 25 future threats of injury created by these barriers.

26 12. Rocca also encountered barriers at the Restaurant, which violate
 27 state and federal law, but were unrelated to his disability. Nothing within this

1 complaint, however, should be construed as an allegation that Rocca is seeking to
2 remove barriers unrelated to his disability.

3 13. Denny's knew that these elements and areas of the Restaurant were
4 inaccessible, violate state and federal law, and interfere with (or deny) access to
5 the physically disabled. Moreover, Denny's has the financial resources to remove
6 these barriers from the Restaurant (without much difficulty or expense), and
7 make the Restaurant accessible to the physically disabled. To date, however,
8 Denny's refuses to either remove those barriers or seek an unreasonable hardship
9 exemption to excuse non-compliance.

10 14. At all relevant times, Denny's has possessed and enjoyed sufficient
11 control and authority to modify the Restaurant to remove impediments to
12 wheelchair access and to comply with the Americans with Disabilities Act
13 Accessibility Guidelines and Title 24 regulations. Denny's has not removed such
14 impediments and has not modified the Restaurant to conform to accessibility
15 standards.

16 VI. FIRST CLAIM

17 **Americans with Disabilities Act of 1990**

18 Denial of "Full and Equal" Enjoyment and Use

19 15. Rocca incorporates the allegations contained in paragraphs 1
20 through 15 for this claim.

21 16. Title III of the ADA holds as a "general rule" that no individual shall
22 be discriminated against on the basis of disability in the full and equal enjoyment
23 (or use) of goods, services, facilities, privileges, and accommodations offered by
24 any person who owns, operates, or leases a place of public accommodation. 42
25 U.S.C. § 12182(a).

26 17. Denny's discriminated against Rocca by denying "full and equal
27 enjoyment" and use of the goods, services, facilities, privileges or
28

1 accommodations of the Restaurant during each visit and each incident of
2 deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 18. The ADA specifically prohibits failing to remove architectural
5 barriers, which are structural in nature, in existing facilities where such removal
6 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
7 achievable” is defined as “easily accomplishable and able to be carried out
8 without much difficulty or expense.” *Id.* § 12181(9).

9 19. When an entity can demonstrate that removal of a barrier is not
10 readily achievable, a failure to make goods, services, facilities, or
11 accommodations available through alternative methods is also specifically
12 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

13 20. Here, Rocca alleges that Denny's can easily remove the architectural
14 barriers at Restaurant without much difficulty or expense, and that Denny's
15 violated the ADA by failing to remove those barriers, when it was readily
16 achievable to do so.

17 21. In the alternative, if it was not “readily achievable” for Denny's to
18 remove the Restaurant’s barriers, then Denny's violated the ADA by failing to
19 make the required services available through alternative methods, which are
20 readily achievable.

21 Failure to Design and Construct an Accessible Facility

22 22. On information and belief, the Restaurant was designed or
23 constructed (or both) after January 26, 1992—independently triggering access
24 requirements under Title III of the ADA.

25 23. The ADA also prohibits designing and constructing facilities for first
26 occupancy after January 26, 1993, that aren’t readily accessible to, and usable by,
27
28

1 individuals with disabilities when it was structurally practicable to do so. 42
2 U.S.C. § 12183(a)(1).

3 24. Here, Denny's violated the ADA by designing or constructing (or
4 both) the Restaurant in a manner that was not readily accessible to the physically
5 disabled public—including Rocca—when it was structurally practical to do so.¹

6 Failure to Make an Altered Facility Accessible

7 25. On information and belief, the Restaurant was modified after
8 January 26, 1992, independently triggering access requirements under the ADA.

9 26. The ADA also requires that facilities altered in a manner that affects
10 (or could affect) its usability must be made readily accessible to individuals with
11 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an
12 area that contains a facility's primary function also requires adding making the
13 paths of travel, bathrooms, telephones, and drinking fountains serving that area
14 accessible to the maximum extent feasible. Id.

15 27. Here, Denny's altered the Restaurant in a manner that violated the
16 ADA and was not readily accessible to the physically disabled public—including
17 Rocca—to the maximum extent feasible.

18 Failure to Modify Existing Policies and Procedures

19 28. The ADA also requires reasonable modifications in policies,
20 practices, or procedures, when necessary to afford such goods, services, facilities,
21 or accommodations to individuals with disabilities, unless the entity can
22 demonstrate that making such modifications would fundamentally alter their
23 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

24 29. Here, Denny's violated the ADA by failing to make reasonable
25 modifications in policies, practices, or procedures at the Restaurant, when these
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27 ¹ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a
28 private attorney general under either state or federal statutes.

1 modifications were necessary to afford (and would not fundamentally alter the
2 nature of) these goods, services, facilities, or accommodations.

3 30. Rocca seeks all relief available under the ADA (*i.e.*, injunctive
4 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
5 U.S.C. § 12205.

6 31. Rocca also seeks a finding from this Court (*i.e.*, declaratory relief)
7 that Denny's violated the ADA in order to pursue damages under California's
8 Unruh Civil Rights Act or Disabled Persons Act.

9 VII. SECOND CLAIM

10 **Disabled Persons Act**

11 32. Rocca incorporates the allegations contained in paragraphs 1
12 through 30 for this claim.

13 33. California Civil Code § 54 states, in part, that: Individuals with
14 disabilities have the same right as the general public to the full and free use of the
15 streets, sidewalks, walkways, public buildings and facilities, and other public
16 places.

17 34. California Civil Code § 54.1 also states, in part, that: Individuals
18 with disabilities shall be entitled to full and equal access to accommodations,
19 facilities, telephone facilities, places of public accommodation, and other places
20 to which the general public is invited.

21 35. Both sections specifically incorporate (by reference) an individual's
22 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

23 36. Here, Denny's discriminated against the physically disabled public—
24 including Rocca—by denying them full and equal access to the Restaurant.
25 Denny's also violated Rocca's rights under the ADA, and, therefore, infringed
26 upon or violated (or both) Rocca's rights under the Disabled Persons Act.

37. For each offense of the Disabled Persons Act, Rocca seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

38. He also seeks to enjoin Denny's from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

VIII. THIRD CLAIM

Unruh Civil Rights Act

39. Rocca incorporates the allegations contained in paragraphs 1 through 30 for this claim.

40. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

41. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

42. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

43. Dennys' aforementioned acts and omissions denied the physically disabled public—including Rocca—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

44. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Rocca by violating the Unruh Act.

45. Rocca was damaged by Dennys' wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

46. Rocca also seeks to enjoin Denny's from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

IX. FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

47. Rocca incorporates the allegations contained in paragraphs 1 through 13 for this claim.

48. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

49. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

50. Rocca alleges the Restaurant is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Restaurant was not exempt under Health and Safety Code § 19956.

51. Dennys' non-compliance with these requirements at the Restaurant aggrieved (or potentially aggrieved) Rocca and other persons with physical disabilities. Accordingly, he seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

X. PRAYER FOR RELIEF

WHEREFORE, Rocca prays judgment against Denny's for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that Denny's violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.²
5. Interest at the legal rate from the date of the filing of this action.

DATED: June 2, 2015

DISABLED ADVOCACY GROUP, APLC

/s/ Scottlynn J Hubbard IV

SCOTTLYNN J HUBBARD IV

Attorney for Plaintiff

² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
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